

Nathan Ochsner, Clerk

1. *What is the purpose of this study?*
 2. *What are the research objectives?*
 3. *What is the research methodology?*
 4. *What are the findings of the study?*
 5. *What are the conclusions of the study?*
 6. *What are the limitations of the study?*
 7. *What are the implications of the study?*
 8. *What are the future research directions?*
 9. *What are the contributions of the study?*
 10. *What are the key words of the study?*

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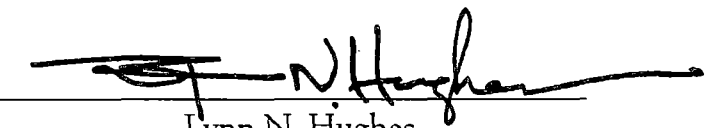
The Electric Reliability Council of Texas seeks to appeal an interlocutory order in the underlying case, *In re Brazos Electric Power*, No. 4:21-cv-3692. The Bankruptcy Court decided it would not abstain from deciding critical questions of the power of Texas to regulate the electricity market. It found that this is a contract issue.

The parties disagree that this is a controlling question. The Council says the Bankruptcy Court should abstain from deciding issues that should be reserved for Texas regulators and Texas state courts. It says this issue would resolve a substantial portion of the case. Brazos says this issue would not materially advance the case because the Commission is not an indispensable party to decide this case. It says the Commission is not part of a contract dispute between the Council and Brazos. It also says the parties should have a complete record before this courts reaches a decision.

The stakes are high for consumers and market participants in the Texas. In February 2022, the Bankruptcy Court plans to hold a trial to litigate this case. The effort that will be expended for the trial is for naught if the threshold issue—whether the Commission has authority to reprice the Texas energy market as it did—remains undecided.

The Supreme Court has said that federal courts should generally abstain from a states regulatory scheme.¹ The interpretation of state authority created by the state legislature should be decided by state courts because the contract issue derives from the Commission's exertion of state authority over the market during the freeze rather than issues under the national constitution. This case may proceed directly to the Court of Appeals.

Signed on January 10, 2022, at Houston, Texas.


Lynn N. Hughes
United States District Judge

¹ See generally, *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); See Charles Alan Wright *et al*, Federal Practice and Procedure §4241 297-296 (3d ed. 2007).